IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.30 OF 2004
IN
SUMMARY SUIT NO.3179 OF 2003

Sushil K. Jain ..Plaintiff.
Vs.
Kamlesh Motiram Bathija & Anr. ..Defendants.

....

Mr. Ramesh Jain for the Plaintiff.
Ms. Kavita Lalwani for the Defendant in support of the Summons for Judgment.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th April, 2007.

P.C. :

1. The suit is instituted on a Bill of Exchange drawn by the First Defendant and accepted by the Second Defendant. A decree was passed on 18th January, 2005. By an order dated 17th March, 2006 the ex parte decree was set aside and both the suit and the Summons for Judgment were restored conditional on the deposit of an amount of Rs.90,000/- by the Defendants. Counsel appearing for

the Defendants states that the aforesaid amount has been deposited by the First Defendant. The amount was not withdrawn by the Plaintiff though liberty to do so was granted in the order dated 17th March, 2006 subject to the Plaintiff filing an undertaking to redeposit, if so directed by the Court.

2. The First Defendant has not disputed his signature on the Bill of Exchange and it is fairly conceded before the Court by the learned counsel. Since the amount that was directed to be deposited in the order dated 17th March, 2006 is stated to have been deposited by the First Defendant, the ends of justice would be served if leave to defend is granted to the First Defendant, conditional on the aforesaid amount continuing to remain in deposit. The amount shall be invested by the Prothonotary and Senior Master in a Fixed Deposit of a nationalized bank and shall be renewed during the pendency of the suit. In so far as the Second Defendant is concerned, unconditional leave to defend the suit is granted having regard to the circumstance that the Second Defendant has disputed his signature on the Bill of Exchange as an acceptor. The Summons for Judgment is

accordingly disposed of.